

ESTTA Tracking number: **ESTTA130698**

Filing date: **03/19/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91175564
Party	Defendant Thursday Enterprise, LLC Thursday Enterprise, LLC 520 N. Columbus Blvd. Suite 203 Philadelphia, PA 19123
Correspondence Address	Lane Fisher Fisher Zucker LLC Suite 1200 121 South Broad Street Philadelphia, PA 19107 lfisher@fisherzucker.com
Submission	Answer
Filer's Name	Lane Fisher
Filer's e-mail	lfisher@fisherzucker.com
Signature	/s/ Lane Fisher
Date	03/19/2007
Attachments	Answer to Opposition.pdf (6 pages)(168482 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CONSILIENT RESTAURANTS, L.P.

Opposer,

v.

THURSDAY ENTERPRISES, LLC

Applicant.

Opposition No.: 91175564

Serial No.: 76/403,255

Mark: CUBA LIBRE

ANSWER AND AFFIRMATIVE DEFENSES

Applicant, Thursday Enterprises, LLC. ("Applicant"), by and through its attorneys, hereby answer the Notice of Opposition and aver as follows:

1. Denied. Applicant is without knowledge sufficient to admit or deny the allegations contained in the first paragraph of the Opposer's Notice and the same is therefore denied.

2. Denied. It is admitted that Opposer is currently engaged in restaurant and bar services under the Cuba Libre mark (the "Mark"). Upon information and belief, it is denied that Opposer has been engaged, by itself or through its predecessor in interest, in restaurant and bar services under the Mark since at least as early as December 1, 1994. By way of further answer, to the extent that the averment implies that Opposer used the Mark prior to Applicant, the same is specifically denied.

3. Denied. It is admitted that Opposer is currently engaged in restaurant and bar services under Mark. Upon information and belief, it is denied that Opposer has been engaged, by itself or through its predecessor in interest, in restaurant and bar services

under the Mark in United States commerce regulated by Congress since at least as early as December 1, 1994. Further, it is denied that Opposer has common law rights in the Mark. By way of further answer, to the extent that the averment implies that Opposer used the Mark in United States commerce regulated by Congress prior to Applicant, the same is specifically denied.

4. Denied. The averments contained in paragraph 4 of the Notice of Opposition state a conclusion of law to which no response is required. To the extent that a response is required, it is specifically denied that the Opposer's trademark application for the Mark is valid and subsisting. To the contrary, Opposer has no rights to the Mark and its application should be terminated.

5. Denied. It is admitted that Opposer is currently engaged in restaurant and bar services under Mark and has advertised its services. Upon information and belief, it is denied that Opposer, itself or through its predecessor in interest, has offered and advertised its services under the Mark in interstate commerce since at least as early as December 1, 1994. By way of further answer, to the extent that the averment implies that Opposer used the Mark in interstate commerce prior to Applicant, the same is specifically denied.

6. Denied. It is admitted that Opposer is currently engaged in restaurant and bar services under Mark. Upon information and belief, it is denied that Opposer has been engaged, by itself or through its predecessor in interest, in restaurant and bar services under the Mark in United States commerce regulated by Congress since at least as early as December 1, 1994. By way of further answer, to the extent that the averment implies

that Opposer used the Mark in United States commerce regulated by Congress prior to Applicant, the same is specifically denied.

7. Admitted.

8. Denied. It is specifically denied that Applicant did not use the Mark for restaurant and catering services before Opposer adopted and began using the Mark for restaurant, bar and catering services. To the contrary, Applicant used the Mark for restaurant, bar and catering services prior to Opposer.

9. Denied. The averments contained in paragraph 9 of the Notice of Opposition state a conclusion of law to which no response is required. To the extent that a response is required, it is specifically denied that Applicant did not use the Mark for restaurant and catering services before Opposer adopted and began using the Mark for restaurant, bar and catering services. To the contrary, Applicant used the Mark for restaurant, bar and catering services prior to Opposer.

10. Denied. The averments contained in paragraph 10 of the Notice of Opposition state a conclusion of law to which no response is required. To the extent that a response is required, it is specifically denied that Applicant did not use the Mark for restaurant and catering services before Opposer adopted and began using the Mark for restaurant, bar and catering services. To the contrary, Applicant used the Mark for restaurant, bar and catering services prior to Opposer. Accordingly, and by way of further answer, Opposer's use of the Mark is likely to cause confusion with Applicant's use and cause irreparable damage to the Applicant.

11. Denied. The averments contained in paragraph 11 of the Notice of Opposition state a conclusion of law to which no response is required. To the extent that

a response is required, it is specifically denied that Applicant did not use the Mark for restaurant and catering services before Opposer adopted and began using the Mark for restaurant, bar and catering services. To the contrary, Applicant used the Mark for restaurant, bar and catering services prior to Opposer. Accordingly, and by way of further answer, Opposer's use of the Mark will reflect on and injure the reputation and goodwill associated with Applicant's Mark.

12. Denied. The averments contained in paragraph 12 of the Notice of Opposition state a conclusion of law to which no response is required. To the extent that a response is required, it is specifically denied that Applicant did not use the Mark for restaurant and catering services before Opposer adopted and began using the Mark for restaurant, bar and catering services. To the contrary, Applicant used the Mark for restaurant, bar and catering services prior to Opposer. Accordingly, and by way of further answer, Opposer's use of the Mark damages and injures the Applicant, the prior and rightful owner and user of the Mark.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed and judgment entered in its favor.

AFFIRMATIVE DEFENSES

1. Applicant's use of the Mark in commerce and interstate commerce for restaurant, bar and catering services pre-dates the Opposer's use.

2. Applicant holds a valid and current registration for the Mark on the United States Patent and Trademark Office's Principal Register of Trademarks at No. 3,033,342 for restaurant and bar services.

3. Opposer's Notice of Opposition is barred by the doctrine of laches.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed and judgment entered in its favor.

FISHER ZUCKER, LLC

By: /s/ Lane Fisher
Lane Fisher, Esquire
121 South Broad Street, Suite 1200
Philadelphia, PA 19107
(215)545-5200 (p)
(215)545-8313 (f)

Attorney for Applicant

Date: March 19, 2007

CONSILIENT RESTAURANTS, L.P.	Opposition No.: 91175564
Opposer,	Serial No.: 76/403,255
v.	Mark: CUBA LIBRE
THURSDAY ENTERPRISES, LLC	
Applicant.	

I, Lane Fisher, certify that on the date indicated below, I did serve a true and correct copy of the Applicant's Answer and Affirmative Defenses, via First Class United States Mail, postage prepaid, upon:

I certify under the penalty of perjury that the foregoing is true and correct.

By: /s/ Lane Fisher
Lane Fisher, Esquire
121 South Broad Street, Suite 1200
Philadelphia, PA 19107
(215)545-5200 (p)
(215)545-8313 (f)

Date: March 19, 2007